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Subpart A—General

§ 165.1 Scope.

The part 165 regulations establish standards and requirements for pesticide containers, repackaging pesticides, and pesticide containment structures.

§ 165.3 Definitions.

Terms used in this part have the same meaning as in the Act and part 152 of this chapter. In addition, as used in this part, the following terms shall have the meanings set forth below.

Act means the Federal Insecticide, Fungicide, and Rodenticide Act.

Agricultural pesticide means any pesticide product labeled for use in or on a farm, forest, nursery, or greenhouse.

Appurtenance means any equipment or device which is used for the purpose of transferring a pesticide from a stationary pesticide container or to any refillable container, including but not limited to, hoses, fittings, plumbing, valves, gauges, pumps and metering devices.

Capacity means, as applied to containers, the rated capacity of the container.

Container means any package, can, bottle, bag, barrel, drum, tank, or other containing-device (excluding any application tanks) used to enclose a pesticide. Containers that are used to sell or distribute a pesticide product and that also function in applying the product (such as spray bottles, aerosol cans and containers that become part of a direct injection system) are considered to be containers for the purposes of this part.

Containment pad means any structure that is designed and constructed to intercept and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area.

Containment structure means either a secondary containment unit or a containment pad.

Custom blending means the service of mixing pesticides to a customer's specifications, usually a pesticide(s)-fertilizer(s), pesticide-pesticide, or a pesticide-animal feed mixture, when:

(1) The blend is prepared to the order of the customer and is not held in inventory by the blender;

(2) The blend is to be used on the customer's property (including leased or rented property);

(3) The pesticide(s) used in the blend bears end-use labeling directions which do not prohibit use of the product in such a blend;

(4) The blend is prepared from registered pesticides; and

(5) The blend is delivered to the end-user along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of the mixture.

Dilutable means that the pesticide product's labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application or use.

Dry pesticide means any pesticide that is in solid form and that has not been combined with liquids; this includes formulations such as dusts, wettable powders, dry flowables, water-soluble powders, granules, and dry baits.

Establishment means any site where a pesticidal product, active ingredient, or device is produced, regardless of whether such site is independently owned or operated, and regardless of whether such site is domestic and producing a pesticidal product for export only, or whether the site is foreign and producing any pesticidal product for import into the United States.

Facility means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person who controls, who is controlled by, or who is under common control with such person).

Nonrefillable container means a container that is not a refillable container and that is designed and constructed for one-time use and is not intended to be filled again with a pesticide for sale or distribution. Reconditioned con-

tainers are considered to be nonrefillable containers.

One-way valve means a valve that is designed and constructed to allow virtually unrestricted flow in one direction and no flow in the opposite direction, thus allowing the withdrawal of material from, but not the introduction of material into, a container.

Operator means any person in control of, or having responsibility for, the daily operation of a facility at which a containment structure is located.

Owner means any person who owns a facility at which a containment structure is required.

Pesticide compatible as applied to containers means that the container construction materials will not chemically react with the formulation. A container is not compatible with the formulation if, for example, the formulation:

(1) Is corrosive to the container;

(2) Causes softening, premature aging, or embrittlement of the container;

(3) Otherwise causes the container to weaken or to create the risk of discharge;

(4) Reacts in a significant chemical, electrolytic, or galvanic manner with the container, or

(5) Interacts in a way, such as the active ingredient permeating the container wall, that would cause the formulation to differ from its composition as described in the statement required in connection with its registration under FIFRA section 3.

Pesticide compatible as applied to containment means that the containment construction materials are able to withstand anticipated exposure to stored or transferred substances without losing the capability to provide the required containment of the same or other substances within the containment area.

Pesticide dispensing area means an area in which pesticide is transferred out of or into a container.

Portable pesticide container means a refillable container that is not a stationary pesticide container.

Produce means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of the

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Act, and any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.

Producer means any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).

Refillable container means a container that is intended to be filled with pesticide more than once for sale or distribution.

Refiller means a person who engages in the activity of repackaging pesticide product into refillable containers. This could include a registrant or a person operating under contract to a registrant.

Refilling establishment means an establishment where the activity of repackaging pesticide product into refillable containers occurs.

Repackage means, for the purposes of this part, to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product's EPA registration number, for sale or distribution.

Rinsate means the liquid resulting from the rinsing of the interior of any equipment or container that has come in direct contact with any pesticide.

Runoff means surface water leaving the target site.

Secondary containment unit means any structure, including rigid diking, that is designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff and leaching from stationary pesticide containers.

Stationary pesticide container means a refillable container that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

Suspension concentrate means a stable suspension of solid particulate active ingredients in a liquid intended for dilution with water before use.

Tamper-evident device means a device which can be visually inspected to determine if a container has been opened.

Transport vehicle means a cargo-carrying vehicle such as an automobile,

van, tractor, truck, semitrailer, tank car or rail car used for the transportation of cargo by any mode.

Washwater means the liquid resulting from the rinsing of the exterior of any equipment or containers that have or may have come in direct contact with any pesticide or system maintenance compound, such as oil or antifreeze.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64224, Oct. 29, 2008]

§§ 165.4–165.19 [Reserved]

Subpart B—Nonrefillable Container Standards: Container Design and Residue Removal

§ 165.20 General provisions.

(a) *What is the purpose of the regulations in this subpart?* The regulations in this subpart establish design and construction requirements for nonrefillable containers used for the distribution or sale of some pesticide products.

(b) *Do I have to comply with the regulations in this subpart?* You must comply with the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in nonrefillable containers. If your pesticide product is subject to the regulations in this subpart as set out in §165.23, your pesticide product must be distributed or sold in a nonrefillable container that meets the standards of these regulations.

(c) *When do I have to comply?* Any pesticide product packaged in a nonrefillable container and released for shipment by you after August 16, 2009 must be packaged in a nonrefillable container that complies with the regulations of this subpart.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64225, Oct. 29, 2008]

§ 165.23 Scope of pesticide products included.

(a) *Are manufacturing use products subject to the regulations in this subpart?* No, the regulations in this subpart do not apply to manufacturing use products, as defined in §158.153(h) of this chapter.

(b) *Are plant-incorporated protectants subject to the regulations in this subpart?* No, the regulations in this subpart do

not apply to plant-incorporated protectants, as defined in §174.3 of this chapter.

(c) *Which antimicrobial pesticide products are not subject to the regulations in this subpart?* The regulations in this subpart do not apply to a pesticide product if it satisfies all of the following conditions:

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm); or

(ii) The pesticide product: (A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment according to the provisions of paragraph (d) of this section.

(d) *How will EPA determine if an antimicrobial pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment?*

(1) EPA may determine that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the nonrefillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment if all of the following conditions exist:

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.

(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the nonrefillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment, EPA may require, by rule, that the product be distributed or sold in nonrefillable containers that comply with all or some of the requirements in this subpart. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be distributed or sold in nonrefillable containers that comply with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the nonrefillable container regulations within the time frames established by EPA in the rule or in its notification.

(e) *What other pesticide products are subject to the regulations in this subpart?*

(1) Except for manufacturing use products, plant-incorporated protectants,

and antimicrobial products that are exempt under paragraph (c) of this section, all of the regulations in this subpart apply to a pesticide product if it satisfies at least one of the following criteria:

(i) The pesticide product meets the criteria of Toxicity Category I as set out in §156.62 of this chapter.

(ii) The pesticide product meets the criteria of Toxicity Category II as set out in §156.62 of this chapter.

(iii) The pesticide product is classified for restricted use as set out in §§152.160 - 152.175 of this chapter.

(2) Except for manufacturing use products, plant-incorporated protectants, antimicrobial products that are exempt under (c) of this section, and other pesticide products that are regulated under paragraph (e)(1) of this section, a pesticide product must be packaged in compliance with 49 CFR 173.24. If the pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the Department of Transportation requires it to be packaged according to 49 CFR parts 171-180.

(f) *What does "pesticide product" or "pesticide" mean in the rest of this subpart?* In §§165.25 through 165.27, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject to the regulations in this subpart as described in paragraphs (a) through (e) of this section.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64225, Oct. 29, 2008]

§ 165.25 Nonrefillable container standards.

(a) *What Department of Transportation (DOT) standards do my nonrefillable containers have to meet under this part if my pesticide product is not a DOT hazardous material?* A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a nonrefillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR 173.4, 173.5, 173.6, 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), part 178, and part 180 that are applicable to a Packing Group III material, or, if subject to a special permit, according to the appli-

cable requirements of 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

(b) *What DOT standards do my non-refillable containers have to meet under this part if my pesticide product is a DOT hazardous material?* (1) If your pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the DOT requires your pesticide product to be packaged according to 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B.

(2) For the purposes of these regulations, a pesticide product that meets the definition of a hazardous material in 49 CFR 171.8 must be packaged in a nonrefillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

(c) *What will EPA do if DOT proposes to change any of the cross-referenced regulations?* If the DOT proposes to change any of the regulations that are incorporated in paragraphs (a) and (b) of this section, EPA will provide notice of the proposed changes and an opportunity to comment in the FEDERAL REGISTER. Following notice and comment, EPA will take final action regarding whether or not to revise its rules, and the extent to which any such revision will correspond with revised DOT regulations.

(d) *What standards for closures do my nonrefillable containers have to meet?* If your nonrefillable container is a rigid container with a capacity equal to or greater than 3.0 liters (0.79 gallons), if the container is not an aerosol container or a pressurized container, and if the container is used to distribute or sell a liquid agricultural pesticide, each nonrefillable container must have at least one of the following standard closures:

(1) Bung, 2 inch pipe size (2.375 inches in diameter), external threading, 11.5

threads per inch, National Pipe Straight (NPS) standard.

(2) Bung, 2 inch pipe size (2.375 inches in diameter), external threading, 5 threads per inch, buttress threads.

(3) Screw cap, 63 millimeters, at least one thread revolution at 6 threads per inch.

(4) Screw cap, 38 millimeters, at least one thread revolution at 6 threads per inch. The cap may fit on a separate rigid spout or on a flexible pull-out plastic spout.

(e) *What standards for dispensing do my nonrefillable containers have to meet?* If your nonrefillable container has a capacity of 5 gallons (18.9 liters) or less, if the container is not an aerosol container, a pressurized container, or a spray bottle, and if the container holds a liquid pesticide, your nonrefillable container must do both of the following:

(1) Allow the contents of the nonrefillable container to pour in a continuous, coherent stream.

(2) Allow the contents of the nonrefillable container to be poured with a minimum amount of dripping down the outside of the container.

(f) *What standards for residue removal do my nonrefillable containers have to meet?* Each nonrefillable container and pesticide formulation combination must meet the applicable residue removal standard of this section.

(1) If the nonrefillable container is rigid and has a capacity less than or equal to 5 gallons (18.9 liters) for liquid formulations or 50 pounds (22.7 kilograms) for solid formulations and if the pesticide product's labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application (that is, if the pesticide is dilutable), each container/formulation combination must be capable of attaining at least 99.99 percent removal of each active ingredient when tested using the EPA test procedure "Rinsing Procedures for Dilutable Pesticide Products in Rigid Containers."

(2) The test must be conducted only if the pesticide product is a suspension concentrate or if EPA specifically requests the records on a case by case basis.

(3) For the rigid container/dilutable product standard in paragraph (f)(1) of

this section, percent removal represents the percent of the original concentration of the active ingredient in the pesticide product when compared to the concentration of that active ingredient in the fourth rinse. Percent removal is calculated by the formula:

percent removal = $[1.0 - RR] \times 100.0$,
where

RR = rinsate ratio = Active ingredient concentration in fourth rinsate/Original concentration of active ingredient in the product

(g) *Can I obtain a waiver from or a modification to any of the nonrefillable container standards?* Yes, it is possible for you to obtain a waiver from or a modification to the nonrefillable container standards, as follows:

(1) EPA may waive or modify the requirements of paragraph (a) of this section regarding the DOT standards for pesticide products that are not DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (a) of this section.

(2) EPA may waive or modify the requirements of paragraph (b) of this section regarding the DOT standards for pesticide products that are DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (b) of this section. EPA will modify or waive the requirements of paragraph (b) of this section only after consulting with DOT to ensure consistency with DOT regulations and exemptions.

(3) EPA may approve a non-standard closure (that is, a closure not listed in paragraph (d) of this section) if EPA determines that both of the following conditions are satisfied:

(i) The non-standard closure is necessary for the proper mixing, loading, or application of the pesticide product.

(ii) The non-standard closure offers exposure protection to handlers during mixing and loading that is the same or greater than that provided by the standard closures.

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(4) EPA may waive or modify the container dispensing capability standards in paragraph (e) of this section if EPA determines that at least one of the following conditions is satisfied:

(i) The product is typically removed from the container by a method other than pouring.

(ii) Compliance with the container dispensing capability standards would increase exposure to the pesticide container handler.

(5) EPA may waive or modify the requirements of paragraph (f) of this section regarding the residue removal standard if EPA determines that both of the following conditions are satisfied:

(i) The residue remaining in the container would not cause an unreasonable adverse effect on the environment; and

(ii) The product offers significant benefits and cannot be economically reformulated or repackaged.

(h) *How do I obtain a waiver from or a modification to any of the nonrefillable container standards?* To obtain a waiver from or a modification to any of the nonrefillable container standards, you must submit a written request for a waiver or a modification to the EPA to the following address: Office of Pesticide Programs (7504P); U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. You cannot distribute or sell the pesticide product in a nonrefillable container that does not comply with all of the nonrefillable container standards unless and until EPA approves the request for the waiver or modification in writing. You must include two copies of the following information (which may be part of an application for registration or amended registration) with your written request:

(1) The name and address of the registrant; the date; and the name, title, signature, and phone number of the company official making the request.

(2) The name and EPA registration number of the pesticide product for which the waiver or modification is requested.

(3) A statement specifying the requirement or requirements from which you are requesting a waiver or a modification.

(4) A description of the nonrefillable container or containers for which the waiver or modification is requested.

(5) Documentation or justification to demonstrate that the applicable waiver or modification criteria in paragraph (g) of this section are satisfied.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64225, Oct. 29, 2008]

§ 165.27 Reporting and recordkeeping.

(a) *What information must I report about my nonrefillable containers?* You are not required to report to EPA with information about your nonrefillable containers under the regulations in this subpart. You should refer to the reporting standards in part 159 of this chapter to determine if information on container failures or other incidents involving pesticide containers must be reported to EPA under FIFRA section 6(a)(2) (7 U.S.C. 136d(a)(2)).

(b) *What recordkeeping do I have to do for my nonrefillable containers?* For each pesticide product that is subject to §§165.25 through 165.27 and is distributed or sold in nonrefillable containers, you must maintain the records listed in this section for as long as a nonrefillable container is used to distribute or sell the pesticide product and for 3 years after that. You must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe. You must keep the following records:

(1) The name and EPA registration number of the pesticide product.

(2) A description of the nonrefillable container(s) in which the pesticide product is distributed or sold.

(3) At least one of the following records to document compliance with the requirement for closures in §165.25(d) for each nonrefillable container used to distribute or sell the pesticide product that must comply with §165.25(d):

(i) A letter or document from the container supplier that describes the closure.

(ii) A specification about the closure in the contract between the registrant or applicant and the container supplier.

(iii) A copy of EPA's approval of any non-standard closure.

(4) At least one of the following records pertaining to the container dispensing capability requirements in §165.25(e) for each nonrefillable container used to distribute or sell the pesticide product that must comply with §165.25(e):

(i) Test data or documentation demonstrating that the nonrefillable container meets the standards in §165.25(e) when it contains the pesticide product.

(ii) Test data or documentation demonstrating that a different nonrefillable container meets the standards in §165.25(e) when it contains the pesticide product or even a different pesticide product and a written explanation of why such data or documentation demonstrates that the container meets the standards in §165.25(e) for the pesticide product.

(iii) A copy of EPA's approval of a request for a waiver from the container dispensing requirement.

(5) At least one of the following records pertaining to the nonrefillable container residue removal requirement in §165.25(f) if the pesticide product is a suspension concentrate or if EPA specifically requests the records on a case-by-case basis:

(i) Test data showing that the non-refillable container and pesticide formulation meet the standard in §165.25(f).

(ii) Test data showing that a different nonrefillable container with the same or a different pesticide formulation meets the standard in §165.25(f), together with a written explanation of why such data demonstrate that the nonrefillable container and pesticide formulation meet the standard in §165.25(f).

(iii) A copy of EPA's approval of a request for a waiver from the residue removal standard requirement.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64225, Oct. 29, 2008]

§§ 165.28–165.39 [Reserved]

Subpart C—Refillable Container Standards: Container Design

§ 165.40 General provisions.

(a) *What is the purpose of the regulations in this subpart?* The regulations in this subpart establish design and construction requirements for refillable containers used for the distribution or sale of some pesticide products.

(b) *Do I have to comply with the regulations in this subpart?* (1) You must comply with all of the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in refillable containers. If your pesticide product is subject to the regulations in this subpart as set out in §165.43, your pesticide product must be distributed or sold in a refillable container that meets the standards of these regulations. This includes your pesticide products that are repackaged according to subpart D of this part.

(2) You must comply with the regulations in §165.45(f) for stationary pesticide containers if you are a refiller of a pesticide product and you are not the registrant of the pesticide product. If the pesticide product is subject to the regulations in this subpart as set out in §165.43, the stationary pesticide containers used to distribute or sell the product must meet the standards of §165.45(f).

(3) If you are a refiller of a pesticide product and you are not a registrant of the pesticide product, §165.45(a)(2) provides an exemption from some of the requirements in §165.45(a)(1).

(c) *When do I have to comply?* Any pesticide product packaged in a refillable container and released for shipment by you after August 16, 2011 must be packaged in a refillable container that complies with the regulations of this subpart.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64226, Oct. 29, 2008]

§ 165.43 Scope of pesticide products included.

(a) *Are manufacturing use products subject to the regulations in this subpart?* No, the regulations in this subpart do

not apply to manufacturing use products, as defined in §158.153(h) of this chapter.

(b) *Are plant-incorporated protectants subject to the regulations in this subpart?* No, the regulations in this subpart do not apply to plant-incorporated protectants, as defined in §174.3 of this chapter.

(c) *Which antimicrobial pesticide products are not subject to the regulations in this subpart?* The regulations in this subpart do not apply to a pesticide product if it satisfies all of the following conditions:

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm); or

(ii) The pesticide product: (A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment ac-

cording to the provisions of paragraph (e) of this section.

(d) *Which requirements must an antimicrobial swimming pool product comply with if it is not exempt from these regulations?* An antimicrobial swimming pool product that is not exempt by paragraph (a), (b), or (c) of this section must comply with all of the regulations in this subpart except §165.45(d) regarding marking and §165.45(e) regarding openings. For the purposes of this subpart, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

(1) The pesticide product is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(2) The labeling of the pesticide product includes directions for use on only a site or sites in the antimicrobial product use category of swimming pools.

(e) *How will EPA determine if an antimicrobial pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment?*

(1) EPA may determine that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the refillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment if all of the following conditions exist:

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.

(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines that an antimicrobial pesticide product otherwise

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exempted by paragraph (c) of this section must be subject to the refillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment, EPA may require, by rule, that the product be distributed or sold in refillable containers that comply with all or some of the requirements in this subpart. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be distributed or sold in refillable containers that comply with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the refillable container regulations within the time frames established by EPA in the rule or in its notification.

(f) *What other pesticide products are subject to the regulations in this subpart?* The regulations in this subpart apply to all pesticide products other than manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt by paragraph (c) of this section. Antimicrobial products covered under paragraph (d) of this section are subject to the regulations indicated in paragraph (d) of this section.

(g) *What does "pesticide product" or "pesticide" mean in the rest of this subpart?* In §165.43(h) through §165.47, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject to the regulations in this subpart as described in paragraphs (a) through (f) of this section.

(h) *Are there any other exceptions?* (1) The regulations in this subpart do not apply to transport vehicles that contain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide.

(2) The regulations in this subpart do not apply to containers that hold pes-

ticides that are gaseous at atmospheric temperature and pressure.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64226, Oct. 29, 2008]

40 CFR Ch. I (7–1–11 Edition)

§ 165.45 Refillable container standards.

(a) *What Department of Transportation (DOT) standards do my refillable containers have to meet under this part if my pesticide product is not a DOT hazardous material?* (1) A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR 173.4, 173.5, 173.6, 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), part 178, and part 180 that are applicable to a Packing Group III material, or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

(2) A refiller is not required to comply with 49 CFR 173.28(b)(2) for pesticide products that are not DOT hazardous materials if the refillable container to be reused complies with the refillable container regulations in this subpart and the refilling is done in compliance with the repackaging regulations in subpart D of this part.

(b) *What DOT standards do my refillable containers have to meet under this part if my pesticide product is a DOT hazardous material?* (1) If your pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the DOT requires your pesticide product to be packaged according to 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B.

(2) For the purposes of these regulations, a pesticide product that meets the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable

requirements of 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

(c) *What will EPA do if DOT proposes to change any of the cross-referenced regulations?* If the DOT proposes to change any of the regulations that are incorporated in paragraphs (a) and (b) of this section, EPA will provide notice of the proposed changes and an opportunity to comment in the FEDERAL REGISTER. Following notice and comment, EPA will take final action regarding whether or not to revise its rules, and the extent to which any such revision will correspond with revised DOT regulations.

(d) *What standards for marking do my refillable containers have to meet?* Each refillable container must be marked in a durable and clearly visible manner with a serial number or other identifying code that will distinguish the individual container from all other containers. Durable marking includes, but is not limited to, etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, and marking with durable ink. The serial number or other identifying code must be located on the outside part of the container except on a closure. Placement on the label or labeling is not sufficient unless the label is an integral, permanent part of or permanently stamped on the container.

(e) *What standards for openings do my refillable containers have to meet?* If your refillable container is a portable pesticide container that is designed to hold liquid pesticide formulations and is not a cylinder that complies with the DOT Hazardous Materials Regulations in 49 CFR parts 171-180, each opening of the container other than a vent must have a one-way valve, a tamper-evident device or both. A one-way valve may be located in a device or system separate from the container if the device or system is the only reasonably foreseeable way to withdraw pesticide from the container. A vent must be designed to minimize the amount of material that could be introduced into the container through it.

(f) *What standards do my stationary pesticide containers have to meet?* If a

stationary pesticide container designed to hold undivided quantities of pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide is located at the refilling establishment of a refiller operating under written contract to you, the stationary pesticide container must meet the following standards:

(1) Except during a civil emergency or any unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, each stationary pesticide container (for liquid and dry pesticides) and its appurtenances must meet both of the following standards:

(i) Each stationary pesticide container and its appurtenances must be resistant to extreme changes in temperature and constructed of materials that are adequately thick to not fail and that are resistant to corrosion, puncture, or cracking.

(ii) Each stationary pesticide container must be capable of withstanding all operating stresses, taking into account static heat, pressure buildup from pumps and compressors, and any other foreseeable mechanical stresses to which the container may be subjected in the course of operations.

(2) Each stationary container of liquid pesticides must meet all of the following standards:

(i) Each stationary container of liquid pesticides must be equipped with a vent or other device designed to relieve excess pressure, prevent losses by evaporation, and exclude precipitation.

(ii) External sight gauges, which are pesticide-containing hoses or tubes that run vertically along the exterior of the container from the top to the bottom, are prohibited on stationary containers of liquid pesticides.

(iii) Each connection on a stationary container of liquid pesticides that is below the normal liquid level must be equipped with a shutoff valve which is capable of being locked closed. A shutoff valve must be located within a secondary containment unit if one is required by subpart E of this part.

(g) *Can I obtain a waiver from or a modification to any of the refillable container standards?* Yes, it is possible for you to obtain a waiver from or a modification to some of the refillable container standards, as follows:

(1) EPA may waive or modify the requirements of paragraph (a) of this section regarding the DOT standards for pesticide products that are not DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (a) of this section.

(2) EPA may waive or modify the requirements of paragraph (b) of this section regarding the DOT standards for pesticide products that are DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (b) of this section. EPA will modify or waive the requirements of paragraph (b) of this section only after consulting with DOT to ensure consistency with DOT regulations and exemptions.

(h) *How do I obtain a waiver from or a modification to any of the refillable container standards?* To obtain a waiver from or a modification to any of the refillable container standards, you must submit a written request for a waiver or a modification to the EPA to the following address: Office of Pesticide Programs (7504P); U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. You cannot distribute or sell the pesticide product in a refillable container that does not comply with all of the refillable container standards unless and until EPA approves the request for the waiver or modification in writing. You must include two copies of the following information (which may be part of an application for registration or amended registration) with your written request:

(1) The name and address of the registrant; the date; and the name, title, signature, and phone number of the company official making the request.

(2) The name and EPA registration number of the pesticide product for which the waiver or modification is requested.

(3) A statement specifying the requirement or requirements from which you are requesting a waiver or a modification.

(4) A description of the refillable container or containers for which the waiver or modification is requested.

(5) Documentation or justification to demonstrate that the applicable waiver or modification criteria in paragraph (g) of this section are satisfied.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64226, Oct. 29, 2008]

§ 165.47 What information must I report about my refillable containers?

You are not required to report to EPA with information about your refillable containers under the regulations in this subpart. You should refer to the reporting standards in part 159 of this chapter to determine if information on container failures or other incidents involving pesticide containers must be reported to EPA under FIFRA section 6(a)(2) (7 U.S.C. 136d(a)(2)).

§§ 165.48–165.59 [Reserved]

Subpart D—Standards for Repackaging Pesticide Products into Refillable Containers

§ 165.60 General provisions.

(a) *What is the purpose of the regulations in this subpart?* The regulations in this subpart establish requirements for repackaging some pesticide products into refillable containers for distribution or sale.

(b) *Do I have to comply with the regulations in this subpart?* You must comply with the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in refillable containers, if you are a registrant who distributes or sells pesticide products to a refiller (that is not part of your company) for repackaging into refillable containers, or if you are a refiller of a pesticide product and you are not the registrant of the pesticide product. Each pesticide product that is subject to the regulations in this subpart as set out in § 165.63 and that is distributed or

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sold in a refillable container must be distributed or sold in compliance with the standards of these regulations.

(c) *When do I have to comply?* Any pesticide product repackaged into a refillable container and released for shipment by you after August 16, 2011 must be repackaged in compliance with the regulations of this subpart.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

§ 165.63 Scope of pesticide products included.

(a) *Are manufacturing use products subject to the regulations in this subpart?* No, the regulations in this subpart do not apply to manufacturing use products, as defined in §158.153(h) of this chapter.

(b) *Are plant-incorporated protectants subject to the regulations in this subpart?* No, the regulations in this subpart do not apply to plant-incorporated protectants, as defined in §174.3 of this chapter.

(c) *Which antimicrobial pesticide products are not subject to the regulations in this subpart?* The regulations in this subpart do not apply to a pesticide product if it satisfies all of the following conditions:

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm); or

(ii) The pesticide product: (A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other

chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment according to the provisions of paragraph (e) of this section.

(d) *Which requirements must an antimicrobial swimming pool product comply with if it is not exempt from these regulations?* (1) An antimicrobial swimming pool product that is not exempt by paragraph (a), (b), or (c) of this section must comply with all of the regulations in this subpart except for the following requirements:

Requirement	Requirement for registrants who distribute or sell directly in refillable containers	Requirement for refillers who are not registrants
Recordkeeping specific to each instance of repackaging	§ 165.65(i)(2)	§ 165.70(j)(2)
Container inspection: criteria regarding a serial number or other identifying code	§ 165.65(e)(2)	§ 165.70(f)(2)
Container inspection: criteria regarding one-way valve or tamper-evident device	§ 165.65(e)(3)	§ 165.70(f)(3)
Cleaning requirement: criteria regarding one-way valve or tamper-evident device	§ 165.65(f)(1)	§ 165.70(g)(1)
Cleaning if the one-way valve or tamper-evident device is not intact	§ 165.65(g)	§ 165.70(h)

(2) For the purposes of this subpart, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

(i) The pesticide product is intended to: disinfect, sanitize, reduce or mitigate growth or development of micro-biological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(ii) The labeling of the pesticide product includes directions for use on only a site or sites in the antimicrobial product use category of swimming pools.

(e) *How will EPA determine if an antimicrobial pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment?*

(1) EPA may determine that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the repackaging regulations in this subpart to prevent an unreasonable adverse effect on the environment if all of the following conditions exist:

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.

(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the repackaging regulations in this subpart to prevent an unreasonable adverse effect on the environment, EPA may require, by rule, that the product be repackaged in compliance with all or some of the requirements in this subpart. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant a reason-

able amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be repackaged in compliance with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the repackaging regulations within the time frames established by EPA in the rule or in its notification.

(f) *What other pesticide products are subject to the regulations in this subpart?*

The regulations in this subpart apply to all pesticide products other than manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt paragraph (c) of this section. Antimicrobial products covered under paragraph (d) of this section are subject to the regulations indicated in that section.

(g) *What does “pesticide product” or “pesticide” mean in the rest of this subpart?* In §§165.63(h) through 165.70, the term “pesticide product” or “pesticide” refers only to a pesticide product or a pesticide that is subject to the regulations in this subpart as described in paragraphs (a) through (f) of this section.

(h) *Are there any other exceptions?* (1) The regulations in this subpart do not apply to transport vehicles that contain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide.

(2) Custom blending is not subject to the regulations in this subpart.

(3) The regulations in this subpart do not apply to containers that hold pesticides that are gaseous at atmospheric temperature and pressure.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

§ 165.65 Registrants who distribute or sell pesticide products in refillable containers.

(a) *Must I comply with the standards in this section?* You must comply with the standards in this section if you are a

registrant who distributes or sells pesticide products in refillable containers. This means that you conduct all of the repackaging for a pesticide product and that you do not distribute or sell the pesticide product to a refiller that is not part of your company for repackaging into refillable containers. If you are a registrant that repackages a product directly into refillable containers for sale or distribution and you also sell or distribute other quantities of that product to an independent refiller for repackaging, then you must meet the requirements in this section for those quantities you distribute or sell directly and the requirements in § 165.67 for those quantities that you distribute or sell to an independent refiller.

(b) *Am I responsible for product integrity?* Yes, you are responsible for the pesticide product that you distribute or sell in refillable containers not being adulterated or different from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(c) *What information must I develop?* For each pesticide product distributed or sold in refillable containers, you must develop both of the following documents in writing.

(1) You must develop a refilling residue removal procedure that describes how to remove pesticide residue from a refillable container (portable or stationary pesticide container) before it is refilled.

(i) The refilling residue removal procedure must be adequate to ensure that the composition of the pesticide product does not differ at the time of its distribution or sale from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(ii) If the refilling residue removal procedure requires the use of a solvent other than the diluent used for applying the pesticide as specified on the labeling under "Directions for Use," or if there is no diluent used for application, the refilling residue removal procedure must describe how to manage any rinsate resulting from the procedure in accordance with applicable Federal and State regulations.

(2) You must develop a description of acceptable refillable containers (portable or stationary pesticide containers) that can be used for distributing or selling that pesticide product.

(i) An acceptable container is one that you have determined meets the standards in subpart C of this part and is compatible with the pesticide formulation intended to be distributed and sold using the refillable container.

(ii) You must identify the containers by specifying the container materials of construction that are compatible with the pesticide formulation and specifying information necessary to confirm compliance with the refillable container requirements in subpart C of this part.

(d) *What requirements must my individual establishments follow regarding repackaging a pesticide product into refillable containers?* A refiller at your individual establishment that repackages a pesticide product into refillable containers for distribution or sale must comply with all of the following provisions.

(1) The establishment must be registered with EPA as a producing establishment as required by § 167.20 of this chapter.

(2) The refiller must not change the pesticide formulation unless the refiller has a registration for the new formulation.

(3) The refiller must repackage a pesticide product only into a refillable container that is identified on your description of acceptable containers for that pesticide product.

(4) The refiller may repackage any quantity of a pesticide product into a refillable container up to the rated capacity of the container. In addition, there are no general limits on the size of the refillable containers that the refiller can use.

(5) The refiller must have all of the following items at the establishment before repackaging a pesticide product into any refillable container for distribution or sale:

(i) The pesticide product's label and labeling.

(ii) The written refilling residue removal procedure for the pesticide product.

(iii) The written description of acceptable containers for the pesticide product.

(6) Before repackaging a pesticide product into any refillable container for distribution or sale, the refiller must identify the pesticide product previously contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with paragraph (f) of this section. The refiller may identify the previous pesticide product by referring to the label or labeling.

(7) The refiller must inspect each refillable container according to paragraph (e) of this section.

(8) The refiller must clean each refillable container according to paragraph (f) or (g) of this section, if required by either paragraph.

(9) The refiller must ensure that each refillable container is properly labeled according to paragraph (h) of this section.

(10) The establishment must maintain records in accordance with paragraph (i) of this section.

(11) The establishment must maintain records as required by part 169 of this chapter.

(12) The establishment must report as required by part 167 of this chapter.

(e) *How must my individual establishments inspect refillable containers?* Before repackaging a pesticide product into any refillable container, a refiller at your establishment must visually inspect the exterior and (if possible) the interior of the container and the exterior of appurtenances. The purpose of the inspection is to determine whether the container meets the necessary criteria with respect to continued container integrity, required markings, and openings. If the condition in paragraph (e)(1) of this section exists, the container fails the inspection and must not be refilled unless the container is repaired, reconditioned, or remanufactured in compliance with the relevant DOT requirement. If the condition in paragraph (e)(2) or (e)(3) of this section exists (or both), the container fails the inspection and must not be refilled until the container meets the standards specified in subpart C of this part. The conditions are:

(1) The integrity of the container is compromised in at least one of the following ways:

(i) The container shows signs of rupture or other damage which reduces its structural integrity.

(ii) The container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects.

(iii) The container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation.

(iv) There is damage to the fittings, valves, tamper-evident devices or other appurtenances that may cause failure of the container.

(2) The container does not bear the markings required by §165.45(a), (b) and (d), or such markings are not legible.

(3) The container does not have an intact and functioning one-way valve or tamper-evident device on each opening other than a vent, if required.

(f) *How must my individual establishments clean refillable containers?* A refiller at your establishment must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in paragraph (f)(1) of this section and either paragraph (f)(2) or (f)(3) of this section are satisfied:

(1) If required, each tamper-evident device and one-way valve is intact.

(2) The refillable container is being refilled with the same pesticide product.

(3) Both of the following conditions are satisfied:

(i) The container previously held a pesticide product with a single active ingredient and is being used to repackaging a pesticide product with the same single active ingredient.

(ii) There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under FIFRA section 3. Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential

statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

(g) *How must my individual establishments clean a refillable container that has a broken (non-intact) tamper-evident device or one-way valve?* As required in paragraph (f) of this section, a refiller at your establishment must clean each refillable container that has a tamper-evident device or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container. In addition, other procedures may be necessary to assure that product integrity is maintained in such cases.

(h) *How must my individual establishments label refillable containers?* Before distributing or selling a pesticide product in a refillable container, a refiller at your establishment must ensure that the label of the pesticide product is securely attached to the refillable container such that the label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. The label and labeling must comply in all respects with the requirements of part 156 of this chapter. In particular, the refiller at your establishment must ensure that the net contents statement and EPA establishment number appear on the label.

(i) *What recordkeeping must my individual establishments do?* Each of your individual establishments that repackages a pesticide product into refillable containers for distribution or sale must maintain all of the records listed in this section in addition to the applicable records identified in parts 167 and 169 of this chapter. The establishment must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe.

(1) For each pesticide product distributed or sold in refillable containers, both of the following records must be maintained for the current operating year and for 3 years after that:

(i) The written refilling residue removal procedure for the pesticide product.

(ii) The written description of acceptable containers for the pesticide product.

(2) Each time a refiller at your establishment repackages a pesticide product into a refillable container and distributes or sells the product, the following records must be generated and maintained for at least 3 years after the date of repackaging:

(i) The EPA registration number of the pesticide product distributed or sold in the refillable container.

(ii) The date of the repackaging.

(iii) The serial number or other identifying code of the refillable container.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

§ 165.67 Registrants who distribute or sell pesticide products to refillers for repackaging.

(a) *Must I comply with the standards in this section?* You must comply with the standards in this section if you are a registrant who distributes or sells pesticide products to a refiller that is not part of your company for repackaging into refillable containers.

(b) *Under what conditions can I allow a refiller to repackage my pesticide product into refillable containers?* You may allow a refiller to repackage your pesticide product into refillable containers and to distribute or sell such repackaged product under your existing registration if all of the following conditions are satisfied:

(1) The repackaging results in no change to the pesticide formulation.

(2) One of the following conditions regarding a registered refilling establishment is satisfied:

(i) The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.

(ii) The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a user who intends to use or apply the product.

(3) You have entered into a written contract with the refiller to repackage the pesticide product and to use the label of your pesticide product.

(4) The pesticide product is repackaged only into refillable containers

that meet the standards of subpart C of this part.

(5) The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refiller's EPA establishment number.

(c) *What violations are applicable to illegal repackaging?* Repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in paragraph (b) of this section is a violation of section 12 of the Act. Both you and the refiller that is repackaging your pesticide product under written contract with you may be liable for violations pertaining to the repackaged product.

(d) *When must I provide the written contract to the refiller?* If you allow a refiller to repackage your product as specified in paragraph (b) of this section you must provide the written contract referred to in paragraph (b)(3) of this section to the refiller before you distribute or sell the pesticide product to the refiller.

(e) *Am I responsible for product integrity?* Yes, for a product that you distribute or sell to a refiller that is not part of your company for repackaging into refillable containers, you are responsible for the pesticide product not being adulterated or different from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(f) *What information must I develop?* For each pesticide product distributed or sold in refillable containers, you must develop both of the following documents in writing.

(1) You must develop a refilling residue removal procedure that describes how to remove pesticide residue from a refillable container (portable or stationary pesticide container) before it is refilled.

(i) The refilling residue removal procedure must be adequate to ensure that the composition of the pesticide product does not differ at the time of its distribution or sale from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(ii) If the refilling residue removal procedure requires the use of a solvent other than the diluent used for applying the pesticide as specified on the labeling under "Directions for Use," or if there is no diluent used for application, the refilling residue removal procedure must describe how to manage any rinsate resulting from the procedure in accordance with applicable Federal and State regulations.

(2) You must develop a description of acceptable refillable containers (portable or stationary pesticide containers) that can be used for distributing or selling that pesticide product.

(i) An acceptable container is one that you have determined meets the standards in subpart C of this part and is compatible with the pesticide formulation intended to be distributed and sold using the refillable container.

(ii) You must identify the containers by specifying the container materials of construction that are compatible with the pesticide formulation and specifying information necessary to confirm compliance with the refillable container requirements in subpart C of this part.

(g) *When must I provide the information to the refiller?* You must provide the refiller with all of the following information and documentation before or at the time of distribution or sale of your pesticide product to the refiller:

(1) Your written refilling residue removal procedure for the pesticide product.

(2) Your written description of acceptable containers for the pesticide product.

(3) The pesticide product's label and labeling.

(h) *What recordkeeping must I do?* You must maintain all of the records listed in this section for the current operating year and for 3 years after that. You must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe:

(1) Each written contract entered into with a refiller for repackaging your pesticide product into refillable containers.

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(2) Your written refilling residue removal procedure for the pesticide product.

(3) Your written description of acceptable containers for the pesticide product.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

§ 165.70 Refillers who are not registrants.

(a) *Must I comply with the standards in this section?* You must comply with the standards in this section if you are a refiller of a pesticide product and you are not the registrant of the pesticide product.

(b) *Under what conditions can I repack-age a registrant's pesticide product into refillable containers?* A registrant may allow you to repack the registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration if all of the following conditions are satisfied:

(1) The repackaging results in no change to the pesticide formulation.

(2) One of the following conditions regarding a registered refilling establishment is satisfied:

(i) The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.

(ii) The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a user who intends to use or apply the product.

(3) The registrant has entered into a written contract with you to repack the pesticide product and to use the label of the registrant's pesticide product.

(4) The pesticide product is repackaged only into refillable containers that meet the standards of subpart C of this part.

(5) The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refillers EPA establishment number.

(c) *What violations are applicable to illegal repackaging?* Repackaging a pesticide product for distribution or sale without either obtaining a registration

or meeting all of the conditions in paragraph (b) of this section is a violation of section 12 of the Act. Both you and the pesticide product's registrant may be liable for violations pertaining to the repackaged product.

(d) *Am I responsible for product integrity?* Yes, you are responsible for the pesticide product that you distribute or sell in refillable containers not being adulterated or different from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(e) *What requirements must I follow regarding repackaging a pesticide product into refillable containers?* You must comply with all of the following provisions.

(1) Your establishment must be registered with EPA as a producing establishment as required by § 167.20 of this chapter.

(2) You must not change the pesticide formulation unless you have a registration for the new formulation.

(3) You must repack a pesticide product only into a refillable container that is identified on the description of acceptable containers for that pesticide product provided by the registrant.

(4) You may repack any quantity of a pesticide product into a refillable container up to the rated capacity of the container. In addition, there are no general limits on the size of the refillable containers that you can use.

(5) You must have all of the following items at your establishment before repackaging a pesticide product into any refillable container for distribution or sale:

(i) The written contract referred to in paragraph (b)(3) of this section from the pesticide product's registrant.

(ii) The pesticide product's label and labeling.

(iii) The registrant's written refilling residue removal procedure for the pesticide product.

(iv) The registrant's written description of acceptable containers for the pesticide product.

(6) Before repackaging a pesticide product into any refillable container for distribution or sale, you must identify the pesticide product previously contained in the refillable container to determine whether a residue removal

procedure must be conducted in accordance with paragraph (g) of this section. You may identify the previous pesticide product by referring to the label or labeling.

(7) You must inspect each refillable container according to paragraph (f) of this section.

(8) You must clean each refillable container according to paragraph (g) or (h) of this section, if required by either paragraph.

(9) You must ensure that each refillable container is properly labeled according to paragraph (i) of this section.

(10) You must maintain records in accordance with paragraph (j) of this section.

(11) You must maintain records as required by part 169 of this chapter.

(12) You must report as required by part 167 of this chapter.

(13) The stationary pesticide containers at your establishment must meet the standards in § 165.45(f).

(14) You may be required to comply with the containment standards in subpart E of this part.

(f) *How must I inspect refillable containers?* Before repackaging a pesticide product into any refillable container, you must visually inspect the exterior and (if possible) the interior of the container and the exterior of appurtenances. The purpose of the inspection is to determine whether the container meets the necessary criteria with respect to continued container integrity, required markings, and openings. If the condition in paragraph (f)(1) of this section exists, the container fails the inspection and must not be refilled unless the container is repaired, reconditioned, or remanufactured in compliance with the relevant DOT requirement. If the condition in paragraph (f)(2) or (f)(3) of this section exists (or both), the container fails the inspection and must not be refilled until the container meets the standards specified in subpart C of this part. The conditions are:

(1) The integrity of the container is compromised in at least one of the following ways:

(i) The container shows signs of rupture or other damage which reduces its structural integrity.

(ii) The container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects.

(iii) The container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation.

(iv) There is damage to the fittings, valves, tamper-evident devices or other appurtenances that may cause failure of the container.

(2) The container does not bear the markings required by § 165.45(a), (b) and (d), or such markings are not legible.

(3) The container does not have an intact and functioning one-way valve or tamper-evident device on each opening other than a vent, if required.

(g) *How must I clean refillable containers?* You must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in paragraph (g)(1) of this section and either paragraph (g)(2) or (g)(3) of this section are satisfied:

(1) If required, each tamper-evident device and one-way valve is intact.

(2) The refillable container is being refilled with the same pesticide product.

(3) Both of the following conditions are satisfied.

(i) The container previously held a pesticide product with a single active ingredient and is being used to repack a pesticide product with the same single active ingredient.

(ii) There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under FIFRA section 3. Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

(h) *How must I clean a refillable container that has a broken (non-intact) tamper-evident device or one-way valve?* As

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required in paragraph (g) of this section, you must clean each refillable container that has a tamper-evident device or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container. In addition, other procedures may be necessary to assure that product integrity is maintained in such cases.

(i) *How must I label refillable containers?* Before distributing or selling a pesticide product in a refillable container, you must ensure that the label of the pesticide product is securely attached to the refillable container such that the label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. The label and labeling must comply in all respects with the requirements of part 156 of this chapter. In particular, you must ensure that the net contents statement and EPA establishment number appear on the label.

(j) *What recordkeeping must I do?* You must maintain all of the records listed in this section in addition to the applicable records identified in parts 167 and 169 of this chapter. You must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe.

(1) For each pesticide product distributed or sold in refillable containers, all of the following records must be maintained for the current operating year and for 3 years after that:

(i) The written contract from the pesticide product's registrant for the pesticide product.

(ii) The written refilling residue removal procedure for the pesticide product.

(iii) The written description of acceptable containers for the pesticide product.

(2) Each time you repackage a pesticide product into a refillable container and distribute or sell the product, the following records must be generated and maintained for at least 3 years after the date of repackaging:

(i) The EPA registration number of the pesticide product distributed or sold in the refillable container.

(ii) The date of the repackaging.

(iii) The serial number or other identifying code of the refillable container.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

§§ 165.71–165.79 [Reserved]

Subpart E—Standards for Pesticide Containment Structures

§ 165.80 General provisions.

(a) *What is the purpose of the regulations in this subpart?* The purpose of the containment regulations in this subpart is to protect human health and the environment from exposure to agricultural pesticides which may spill or leak from stationary pesticide containers. This protection is achieved by the construction of secondary containment units or pads at certain facilities handling agricultural pesticides. These regulations will also reduce waste generation associated with:

(1) Storage and handling of large quantities of pesticide products.

(2) Pesticide dispensing and container-refilling operations.

(b) *Do I have to comply with the regulations in this subpart?* You must comply with the regulations in this subpart if you are an owner or operator of one of the following businesses and if you also have a stationary pesticide container or a pesticide dispensing (including container refilling) area:

(1) Refilling establishments who repackage agricultural pesticides and whose principal business is retail sale (*i.e.*, more than 50% of total annual revenue comes from retail operations).

(2) Custom blenders of agricultural pesticides.

(3) Businesses which apply an agricultural pesticide for compensation (other than trading of personal services between agricultural producers).

(c) *When do I have to comply?* You must comply with all applicable containment regulations for new and existing structures as of August 17, 2009.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

§ 165.81 Scope of stationary pesticide containers included.

(a) *What is a stationary pesticide container?* A stationary pesticide container is a refillable container that is fixed at a single facility or establishment, or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

(b) *What stationary pesticide containers are subject to the regulations in this subpart?* Stationary pesticide containers designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the regulations in this subpart and must have a secondary containment unit that complies with the provisions of this subpart unless any of the following conditions exists:

(1) The container is empty, that is, all pesticide that can be removed by methods such as draining, pumping or aspirating has been removed (whether or not the container has been rinsed or washed).

(2) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.

(3) The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.

(4) The container is dedicated to non-pesticide use, and is labeled accordingly.

§ 165.82 Scope of pesticide dispensing areas included.

(a) *What pesticide dispensing areas are subject to the regulations in this subpart?* A pesticide dispensing area is subject to the containment regulations in this subpart and must have a containment pad that complies with the requirements of this subpart if any of the following activities occur:

(1) Refillable containers of agricultural pesticide are emptied, cleaned or rinsed.

(2) Agricultural pesticides are dispensed from a stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 li-

ters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide for any purpose, including refilling or emptying for cleaning. This applies when pesticide is dispensed from the container into any vessel, including, but not limited to:

- (i) Refillable containers;
- (ii) Service containers;
- (iii) Transport vehicles;
- (iv) Application equipment.

(3) Agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable container.

(4) Agricultural pesticides are dispensed from any other container for the purpose of refilling a refillable container for sale or distribution. Containment requirements do not apply if the agricultural pesticide is dispensed from such a container for use, application or purposes other than refilling for sale or distribution.

(b) *What pesticide dispensing areas are exempt from the regulations in this subpart?* A pesticide dispensing area is exempt from the regulations in this subpart if any of the following conditions exist:

(1) The only pesticides in the dispensing area would be gaseous when released at atmospheric temperature and pressure.

(2) The only pesticide containers refilled or emptied within the dispensing area are stationary pesticide containers which are already protected by a secondary containment unit that complies with the provisions of this subpart.

(3) The pesticide dispensing area is used solely for dispensing pesticide from a rail car which does not remain at a facility long enough to meet the definition of a stationary pesticide container; that is, 30 days.

§ 165.83 Definition of new and existing structures.

(a) *What is a new containment structure?* A new containment structure is one whose installation began after November 16, 2006. Installation is considered to have begun if:

(1) You, as the owner or operator, have obtained all Federal, State, and local approvals or permits necessary to

begin physical construction of the containment structure; AND

(2) You have either begun a continuous on-site physical construction or installation program OR you have entered into contractual obligations. The contract must be such that it cannot be canceled or modified without substantial loss, and must be for the physical construction or installation of the containment structure within a specific and reasonable time frame.

(b) *What is an existing containment structure?* An existing containment structure is defined as one whose installation began on or before November 16, 2006.

§ 165.85 Design and capacity requirements for new structures.

(a) *For all new containment structures, what construction materials must I use?* These are the material specifications for a new containment structure:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means able to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

(b) *For all new containment structures, what are the general design requirements?* These are the general design requirements for new containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) Appurtenances, discharge outlets or gravity drains must not be config-

ured through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart. Appurtenances must be configured in such a way that spills or leaks are easy to see.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

(c) *For new secondary containment units for stationary containers of liquid pesticides and new containment pads in pesticide dispensing areas, what are the capacity requirements?* These are the capacity requirements:

(1) New secondary containment units for stationary containers of liquid pesticides, if protected from precipitation, must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(2) New secondary containment units for stationary containers of liquid pesticides, if exposed to or unprotected from precipitation, must have a capacity of at least 110 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(3) New containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

(4) New containment pads in pesticide dispensing areas which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

(d) *For new secondary containment units for stationary containers of liquid pesticides, what are the specific design requirements?* You must either anchor or

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elevate each stationary container of liquid pesticides protected by a new secondary containment unit to prevent flotation in the event that the secondary containment unit fills with liquid.

(e) *For new containment pads in pesticide dispensing areas, what are the specific design requirements?* Each new containment pad in a pesticide dispensing area must:

(1) Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

(2) Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.

(3) Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically-activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.

(4) Have its surface sloped toward an area where liquids can be collected for removal, such as a liquid-tight sump or a depression, in the case of a single-pour concrete pad.

(f) *For new secondary containment units for stationary containers of dry pesticides, what are the specific design requirements?* These are the specific design requirements for new secondary containment units for stationary containers of dry pesticides:

(1) The stationary containers of dry pesticides within the containment unit must be protected from wind and precipitation.

(2) Stationary containers of dry pesticides must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

(3) The storage area for stationary containers of dry pesticides must include a floor that extends completely beneath the pallets or raised concrete platforms on which the stationary containers of dry pesticides must be stored.

(4) The storage area for stationary containers of dry pesticides must be enclosed by a curb a minimum of 6 inches high that extends at least 2 feet beyond the perimeter of the container.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

§ 165.87 Design and capacity requirements for existing structures.

(a) *For all existing containment structures, what construction materials must I use?* These are the material specifications for an existing containment structure:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means able to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

(b) *For all existing containment structures, what are the general design requirements?* These are the general design requirements for existing containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) You must seal all appurtenances, discharge outlets and gravity drains

through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

(c) *For existing secondary containment units for stationary containers of liquid pesticides and existing containment pads in pesticide dispensing areas, what are the capacity requirements?* These are the capacity requirements:

(1) Existing secondary containment units for stationary containers of liquid pesticides must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(2) Existing containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

(3) Existing containment pads in pesticide dispensing areas which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

(d) *For existing secondary containment units for stationary containers of liquid pesticides, what are the specific design requirements?* You must either anchor or elevate each stationary container of liquid pesticides protected by an existing secondary containment unit to prevent flotation in the event that the secondary containment unit fills with liquid.

(e) *For existing containment pads in pesticide dispensing areas, what are the specific design requirements?* Each existing containment pad in a pesticide dispensing area must:

(1) Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

(2) Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.

(3) Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically-activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.

(f) *For existing secondary containment units for stationary containers of dry pesticides, what are the specific design requirements?* These are the specific design requirements for existing secondary containment units for stationary containers of dry pesticides:

(1) The stationary containers of dry pesticides within the containment unit must be protected from wind and precipitation.

(2) Stationary containers of dry pesticides must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

(3) The storage area for stationary containers of dry pesticides must include a floor that extends completely beneath the pallets or raised concrete platforms on which the stationary containers of dry pesticides must be stored.

(4) The storage area for stationary containers of dry pesticides must be enclosed by a curb a minimum of 6 inches high that extends at least 2 feet beyond the perimeter of the container.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64228, Oct. 29, 2008]

§ 165.90 Operational, inspection and maintenance requirements for all new and existing containment structures.

(a) *What are the operating procedures required for all new and existing containment structures?* As the owner or operator of a new or existing pesticide containment structure, you must:

(1) Manage the structure in a manner that prevents pesticides or materials containing pesticides from escaping from the containment structure (including, but not limited to, pesticide residues washed off the containment structure by rainfall or cleaning liquids used within the structure.)

(2) Ensure that pesticide spills and leaks on or in any containment structure are collected and recovered in a manner that ensures protection of human health and the environment (including surface water and groundwater) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must occur no later than the end of the day on which pesticides have been spilled or leaked except in circumstances where a reasonable delay would significantly reduce the likelihood or severity of adverse effects to human health or the environment.

(3) Ensure that all materials resulting from spills and leaks and any materials containing pesticide residue are managed according to label instructions and applicable Federal, State and local laws and regulations.

(4) Ensure that transfers of pesticides between containers, or between containers and transport vehicles are attended at all times.

(5) Ensure that each lockable valve on a stationary pesticide container, if it is required by § 165.45(f), is closed and locked, or that the facility is locked, whenever the facility is unattended.

(b) *What are the inspection and maintenance requirements for all new and existing containment structures?* As owner or operator of a new or existing pesticide containment structure, you must:

(1) Inspect each stationary pesticide container and its appurtenances and each containment structure at least monthly during periods when pesticides are being stored or dispensed on the containment structure. Your in-

spection must look for visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage.

(2) Initiate repair to any areas showing visible signs of damage and seal any cracks and gaps in the containment structure or appurtenances with material compatible with the pesticide being stored or dispensed no later than the end of the day on which damage is noticed and complete repairs within a time frame that is reasonable, taking into account factors such as the weather, and the availability of cleanup materials, trained staff, and equipment.

(3) Not store any additional pesticide on a containment structure if the structure fails to meet the requirements of this subpart until suitable repairs have been made.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64228, Oct. 29, 2008]

§ 165.92 What if I need both a containment pad and a secondary containment unit?

You may combine containment pads and secondary containment units as an integrated system provided the requirements set out in this subpart for containment pads and secondary containment units in §§ 165.85(a) and (b), 165.87(a) and (b) and § 165.90, and as applicable, §§ 165.85(c)-(f) and 165.87(c)-(f) are satisfied separately.

§ 165.95 What recordkeeping do I have to do as a facility owner or operator?

As a facility owner or operator subject to the requirements of this subpart, you must maintain the following records, and you must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe:

(a) Records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances must be kept for 3 years and must include the following information:

(1) Name of the person conducting the inspection or maintenance;

(2) Date the inspection or maintenance was conducted;

(3) Conditions noted;

(4) Specific maintenance performed.

(b) Records for any non-stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide that holds pesticide but is not protected by a secondary containment unit meeting these regulations must be kept for 3 years. Records on these non-stationary pesticide containers must include the time period that the container remains at the same location.

(c) Records of the construction date of the containment structure must be kept for as long as the pesticide containment structure is in use, and for 3 years afterwards.

§ 165.97 States with existing containment programs.

(a) *What options are available to States that already have containment regulations?* States that have promulgated containment regulations effective prior to August 16, 2006, and which also have primary enforcement responsibility and/or certification programs, have the option of continuing to implement their own programs in lieu of these Federal regulations.

(b) *How may a State request authority to continue implementing its State containment regulations?* A State with pesticide containment regulations may request the authority to continue implementing State containment regulations by August 16, 2007 in the following manner:

(1) The State must submit a letter and any supporting documentation to EPA. Supporting documentation must demonstrate that the State's program is providing environmental protection equivalent to or more protective than that expected to be provided by the Federal regulations in this subpart.

(2) The State must identify any significant changes to State regulations which would be necessary in order to provide environmental protection equivalent to the EPA regulations, and develop an estimated timetable to effect these changes. The letter must be signed by the designated State Lead Agency.

(c) *How will EPA notify the State if its request is granted?* EPA's Office of Pesticide Programs will review the State's correspondence and determine whether the State program is adequate to provide environmental protection equivalent to or more protective than these Federal regulations for new and existing containment structures. EPA's Office of Pesticide Programs will inform the State of its determination through a letter authorizing or declining to authorize the State to continue implementing its containment regulations and will detail any reasons for declining authorization.

(d) *How must a State inform EPA of revisions to its containment regulations?* Any state that has received authorization to continue implementing its state containment regulations must inform EPA by letter signed by the designated State Lead Agency within 6 months of any revision to the State's containment regulations. EPA will inform the state by letter if it determines that the State's containment regulations are no longer adequate based on the revisions. The State's containment regulations will remain in effect, unless and until EPA sends the state a letter making this determination.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64228, Oct. 29, 2008]

PART 166—EXEMPTION OF FEDERAL AND STATE AGENCIES FOR USE OF PESTICIDES UNDER EMERGENCY CONDITIONS

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